D.T.E. 00-83-A

Petition of Cambridge Electric Light Company and Commonwealth Electric Company for approval of their 2000 Transition Charge True-Up, pursuant to G.L. c. 164, §1A(a) and 220 C.M.R. § 11.03(4)(e).

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I. INTRODUCTION

On November 13, 2000, pursuant to G.L. c. 164, §1A(a) and 220 C.M.R. § 1.03(4)(e), Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth") (collectively, "Companies") filed with the Department of Telecommunications and Energy ("Department") their 2000 reconciliation filing, which included a reconciliation of transition charge costs and revenues as well as standard offer and default service costs and revenues ("Reconciliation Filing"). The Reconciliation Filing also proposed updated charges and tariffs to be effective January 1, 2001. The Department docketed the matter as D.T.E. 00-83.

On December 21, 2000, the Attorney General of the Commonwealth ("Attorney General") filed comments on the Reconciliation Filing. On December 22, 2000, the Department allowed the Companies' tariffs to take effect on January 1, 2001, subject to further investigation and reconciliation. Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 00-83 (2000).

On February 27, 2001, the Attorney General filed a notice of intervention pursuant to G.L. c. 12, § 21E. In addition, the Department granted both the Commonwealth of Massachusetts Division of Energy Resources ("DOER") and Western Massachusetts Electric Company ("WMECo") permission to participate as limited participants in this proceeding.

On May 5, 2001, the Companies filed supplemental testimony and exhibits that provided updates through December 31, 2000 of the Companies' Reconciliation Filing. On June 7, 2001, the Department granted the Companies' request to stay public and evidentiary hearings to

supplement their filing to permit the Companies to comply with the Department's Order dated June 1, 2001 in Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 99-90-C (2001). On June 25, 2001, the Department granted the Companies' request to stay the public and evidentiary hearings to allow the Companies and the Attorney General (collectively "Parties") time to attempt to negotiate a settlement. On July 18, 2001, the Companies filed supplemental prefiled testimony and exhibits that incorporated changes required by D.T.E. 99-90-C ("Supplemental Filing").

On September 24, 2001, pursuant to notice duly issued, the Department conducted a public hearing and procedural conference. The Department subsequently granted several additional requests by the Companies to stay evidentiary hearings to allow the Parties more time to attempt to negotiate a settlement. On April 10, 2002, the Parties filed the following: (1) a joint motion for approval of a proposed settlement agreement ("Joint Motion"); and (2) a proposed settlement agreement ("Settlement").[1] The Joint Motion requests approval of the Settlement on or before June 14, 2002.[2] No comments were filed on the Settlement.

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[1] The Parties also submitted supplemental filings with the proposed Settlement and labeled them as follows: Exhs. CAM-BKR-1 (Settlement); COM-BKR-1 (Settlement); CAM-RAP-1 (Settlement); CAM-RAP-2 (Settlement); COM-RAP-1 (Settlement); COM-RAP-2 (Settlement); CAM/COM-1 (Settlement).

[2] The Joint Motion also requests that the Department enter the following into evidence: (1) the Companies' 30 exhibits; (2) the Companies' responses to the Department's 36 information requests; and (3) the Companies' responses to the Attorney General's 83 information requests (Settlement, App. A). The Department grants this request and also moves into evidence the Companies' responses to the Department's eight Settlement Information Requests as well as the Companies' supplemental filings submitted with the Settlement.

II. DESCRIPTION OF THE SETTLEMENT

The Settlement states that it resolves all issues relating to the reconciliation of costs and revenues for the years 1998, 1999, and 2000 (Settlement at 2, §§ 1.7). The Settlement includes adjustments to the Companies' reconciliation of transition charge, standard offer service, and default service costs and revenues, which ultimately serve to reduce the transition charge for the Companies (id. at 2-4, § 2.1 (a)-(g), citing Exhs. COM-BKR-1 (Settlement); CAM-BKR-1 (Settlement)).[3]

The Settlement states that the reconciliation of transition charge revenues shall be performed in accordance with the Companies' proposal as set forth in the Reconciliation Filing, provided that each year beginning January 1, 2003, the Companies shall provide for an adjustment to the transition charge for each rate class to ensure that the reconciliation of the transition charge for each rate class maintains a uniform recovery of the transition charge across rate classes (Settlement at 4-5, § 2.2).[4] A similar method shall be employed in succeeding years, whereby a transition charge adjustment for each class will be calculated based upon the reconciliation of actual versus design transition charge revenues from prior

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[3] The adjustments are to the exhibits in the Companies' Supplemental Filing.

[4] The Settlement's proposed method of reconciling the transition charge differs from the Companies' current method of reconciling the transition charge. The Companies explain that the current method assumes that every kilowatt hour ("KWH") delivered collects the "average" transition charge approved by the Department (Exh. CAM/COM-BKR at 7). The Companies' current rate design collects transition costs for some customer classes through peak and off-peak KWH charges and through KW demand charges. Consequently, as load patterns deviate from the load patterns used to develop the current rates, so do the revenues from amounts the rates are designed to collect (id.).

periods (id. at 5). To the extent that an individual rate class transition charge adjustment for a given year results in a net over- or undercollection of transition charge revenues, compensating adjustments will be made to the transition charge calculation (id.).

The Settlement states that revised Transition Cost Adjustment tariffs will be filed as part of the Companies' next reconciliation filing in order to implement all the terms of the Settlement Agreement (id. at 5, § 2.4). Further, the Settlement states that the intent of the proposed reconciliation method described in the Settlement at § 2.2 is to fully reconcile, on a company-wide basis and by customer class, transition charge revenues with actual revenues received (id. at 5-6, § 2.4).

In addition, the Settlement states that, other than where expressly stated, the Settlement: (1) shall not constitute an admission by any party that any allegation or connection in this proceeding is true or false; and (2) shall not in any respect constitute a determination by the Department as to the merits of any issue raised during the proceedings (Settlement at 6, § 3.1). The Settlement also states that it establishes no principles and, except as to those issues resolved by approval of this settlement, shall not foreclose any party from making any contention in any future proceedings (Settlement at 6, § 3.2).

The Settlement provides that the content of Settlement negotiations (including work papers and documents produced in connection with the Settlement) shall be confidential (Settlement at 6, § 3.3). The Settlement also states that all offers of Settlement are without prejudice to the position of any party or participant presenting such offer (Settlement at 6, § 3.3). The Settlement provides that the content of Settlement negotiations are not to be used in

any manner with these or other proceedings involving Parties to this settlement (Settlement at 6, § 3.3). Should the Department not approve the Settlement in its entirety by June 14, 2002, the Settlement provides that it shall be deemed withdrawn and not constitute any part of the record in this proceeding or be used for any other purpose (Settlement at 6, § 3.5).

III. STANDARD OF REVIEW

In assessing the reasonableness of an offer of settlement, the Department reviews the entire record as presented in a company's filing and other record evidence to ensure that the settlement is consistent with applicable law, including relevant provisions of the Restructuring Act, Department precedent, and the public interest. Boston Edison Company, D.P.U./D.T.E. 96-23, at 13 (1998); Berkshire Gas Company, D.P.U. 96-92, at 8 (1996); Boston Gas Company, D.P.U. 96-50, at 7 (Phase I) (1996). A settlement among the parties does not relieve the Department of its statutory obligation to conclude its investigation with a finding that a just and reasonable outcome will result. Essex County Gas Company, D.P.U. 96-70, at 5-6 (1996); Fall River Gas Company, D.P.U. 96-60, at 5 (1996).

IV. ANALYSIS AND FINDINGS

In assessing the provisions in the Settlement at 2-4, § 2.1 (a)-(g) that adjust the Companies' transition charge costs, the Department must ensure that the proposed adjustments are consistent with or substantially comply with the Restructuring Act, the Restructuring Plan, applicable law, and Department precedent. See, e.g., Boston Edison Company, D.T.E. 00-82, at 7 (2001); Boston Edison Company, D.T.E. 98-111, at 4 (1999). The Department has encouraged parties to meet and resolve issues related to reconciliation filings. See, e.g., Boston

Edison Company, D.T.E. 99-107 (Phase II) at 11 (2000); D.T.E. 98-111, at 33-34 (1999). Therefore, the Parties' efforts to settle the issue of transition charge costs are consistent with our directives.

Regarding the proposed method in the Settlement at 4-5, § 2.2 for reconciling the Companies' transition charge, the Department notes that the Restructuring Act provides for the full reconciliation of transition costs and revenues. G.L. c. 164, §§ 1A, 1G. The Department echoed this requirement in Cambridge Electric Company/Commonwealth Electric Company, D.P.U./D.T.E. 97-111, at 75-77 (1998), when we approved, with modifications, the Companies' method for reconciling the transition charge. The proposed method in the Settlement at 4-5, § 2.2 is based on each rate class' actual revenues received for KWHs delivered and ensures that the actual transition charge revenues and costs are fully reconciled on a company-wide basis. In addition, the proposed method in the Settlement at 4-5, § 2.2 ensures uniform cost responsibility among rate classes because it reconciles, for each rate class, the actual transition charge revenues with the transition charge revenues that would have been collected using a company-average transition charge rate.[5]

The Department finds that the Settlement's proposed reconciliation method is reasonable and is in the public interest because the Companies' customers pay no more and no less than the approved level of transition costs, and because the collection of the transition charge is uniformly apportioned among rate classes. See, e.g., D.T.E. 00-82, at 9. In addition, the

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[5] In contrast, the current method, as approved in D.T.E. 97-111, at 75-77, is based on the assumption that every KWH delivered collects the theoretically expected per KWH transition charge.

Department finds that the Settlement's proposed method of reconciling transition charge revenues is consistent with the Restructuring Plan, which requires the full reconciliation of transition costs and revenues. D.T.E. 97-111, at 75-77. Moreover, the Settlement's proposed method of reconciling transition charge revenues substantially complies with the Restructuring Act, which also requires the full reconciliation of transition costs and revenues. G.L. c. 164, §§ 1A, 1G. Accordingly, we direct the Companies to revise their existing Transition Charge Adjustment Provision tariffs in their next reconciliation filing, as discussed in the Settlement at 5, § 2.4.

Upon review of the entire record in this proceeding, the Department finds that, on balance, the Settlement represents a reasonable resolution of the issues in this proceeding. Therefore, the Department approves the Settlement.[6]

V. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That the motion to approve an offer of settlement and proposed settlement agreement, submitted by Cambridge Electric Light Company and Commonwealth Electric Company on April 10, 2002, be and hereby is ALLOWED; and it is

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[6] The Department disallows the claim of evidentiary privilege set out in the proposed Settlement at 6-7, § 3.3. The claim is untenable. Despite the Department's statement of the prerequisites to making an exclusionary claim colorable, see Massachusetts Electric Company/Eastern Edison Company, D.T.E. 99-47, at 71-74 (2000), the claim reappears here. See, e.g., D.T.E. 00-82, at 9, n.12.

FURTHER ORDERED: That Cambridge Electric Light Company and Commonwealth Electric Company follow all directives in this Order.

By Order of the Department,

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Paul B. Vasington, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

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Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).